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In re Application of : DECISION ON
MACHUEL, Gilbert et al. :
Application No.: 10/565,054 :
PCT No.: PCT/EP03/07797 : PETITION UNDER
Int. Filing Date: 17 July 2003 :
Priority Date: None : 37 CFR 1.181
Attorney's Docket No.: 89964/JLT :
For: Apparatus And Method For Treating Imaging Materials :

This communication is issued in response to applicants' "Petition For Withdrawal of Abandonment For Failure To Receive An Office Action," filed 16 May 2007. Applicants' submission has been treated as a petition under 37 CFR 1.181 requesting that the Notification of Abandonment (Form PCT/DO/EO/909), mailed 01 May 2007, be withdrawn.

BACKGROUND

On 17 July 2003, applicant filed international application PCT/EP03/07797. The thirty-month period for paying the basic national fee in the United States expired at midnight on 17 January 2006.

On 17 January 2006, applicant filed a transmittal letter for entry into the national stage in the United States, which was accompanied, *inter alia*, by the requisite basic national fee.

On 23 May 2006, the Office mailed a Notification of Missing Requirements (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497 (a)-(b) and the surcharge for late filing of the oath or declaration are required.

On 01 May 2007, the Office mailed a Notification of Abandonment (Form PCT/DO/EO/909) indicating that the instant application is abandoned for failure to respond to the Notification of Missing Requirements mailed 23 May 2006.

On 16 May 2007, applicant submitted the instant "Petition For Withdrawal of Abandonment For Failure To Receive An Office Action," including a declaration executed by the inventors. Applicant explained that the Notification of Missing Requirements (Form PCT/DO/EO/905) mailed on 23 May 2006 was never received and requests that the Notification of Abandonment be rescinded.

DISCUSSION

Applicants state in the instant petition that because the "Official Action...was never received by the Petitioner and a search of the file jacket and docket records indicate that the Official Action was not received," the Notice of Abandonment, mailed 01 May 2007, should be withdrawn.

Under MPEP §711.03(c)(I)(A), a proper showing in order to establish that papers were not received must include the following: (1) a statement by the practitioner that the Office action was not received by the practitioner; (2) a statement by the practitioner attesting that a search of the file jacket and docket records indicates that the Office action was not received; and (3) a copy of the docket record where the non-received Office action would have been entered had it been received and docketed (the docket record must also be referenced in practitioner's statement).

With regard to items (1) and (2), applicant has submitted the required statements. Hence, items (1) and (2) have been satisfied.

With regard to item (3), applicants have provided a copy of the docket record which purportedly shows where the paper would have been entered had it been received. However, the printout of the docket report for this specific application is not sufficient to establish that the Notification of Missing Requirements (Form PCT/DO/EO/905) was not received and misdocketed to another application. As documentary proof of non-receipt of the Office action, "if a three month period for reply was set in the nonreceived Office action, a copy of the docket report showing all replies docketed for a date three months from the mail date of the nonreceived Office action must be submitted." MPEP §711.03(c)(I)(A). Accordingly, applicants are required to provide a docket record listing all replies due on 23 July 2006.

Thus, applicants have not provided the proper showing necessary to rescind the Notification of Abandonment (Form PCT/DO/EO/909), mailed 01 May 2007, and the petition may not be properly granted.

It is noted that the surcharge for late filing of the declaration (\$130) has not been submitted.

CONCLUSION

For the reasons stated above, the petition under 37 C.F.R. 1.181 is **DISMISSED** without prejudice.

U.S. national stage application number 10/565,054 remains **ABANDONED**.

Any further correspondence with respect to this matter should be addressed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, VA 22313-1450, with the contents of the letter marked to the attention of the PCT Legal Office.



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